

KITSAP COUNTY FAMILY LAW PRACTICE AND PROCEDURE COMMITTEE

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COMMENTS RE: PROPOSED SUPERIOR COURT FAMILY LAW CIVIL RULES (FLCR)

TO: Camilla Faulk
Clerk of the Supreme Court
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FROM: Holly G. Banks, Chair
Family Law Practice & Procedure Committee
Kitsap County Bar Association

Dear Ms. Faulk:

This comment is submitted on behalf of the Family Law Practice & Procedure Committee of the Kitsap County Bar Association. It comprises a consensus view of the membership.

Our committee appreciates the amount of effort that went into this process. We understand that the proposal of standardized rules was intended to simplify the process and promote access to justice. Nonetheless, we fear that adding yet another layer of rules which parties must consult and abide by, when added to existing state and local rules, would impede efficiency and increase confusion.

Kitsap is a mid-sized county, consisting of eight superior court judges and one full-time commissioner. Our bench has been very conscientious and careful to implement local rules that maintain a smoothly flowing and fair process. We take pride in our reputation of being able to work together collegially and professionally to ensure that the particular needs of our county, both bench and bar, are met.

In general, people are reluctant to support a unified set of rules that appear to be fashioned without individual interests in mind. Therefore, our inquiry is the extent to which small/medium counties' unique and particular circumstances were considered, or whether a one-size-fits-all approach imbued from the requirements of larger counties, simply hinders access to justice by forcing smaller counties to succumb to the inevitable inefficiencies of larger counties.

By way of example, Kitsap and many other counties in the state can afford litigants access to their courts within five (5) days. The expansion of the moving and response time in proposed

FLCR 6(d)(2) – TIME - Motion Seeking Temporary Relief imposes a statewide denial of timely access to justice by creating a standard that slows access down to the slowest common denominator of the larger counties which do not have the ability or capacity afford the same. The time it takes for motions to be heard in other counties has long been a source of frustration among local practitioners who travel to these counties and experience the delays imposed by rules. This rule would not be an improvement, and indeed would most likely lead to an increase in Motions to Shorten Time.

With respect to **FLCR 7(e)(1) – PLEADINGS ALLOWED - Page Limits**: The way we understand this rule to be written, the moving party has a total of 25 pages both to make an initial case and to reply to whatever documents are submitted in the response. The responding party has a total of 25 pages as well. The moving party has no way to guess the number of pages it must reserve in order to reply to a response that is yet unseen. If there is a page limit, the moving party should have 25 pages for its case in chief and an additional number of pages for reply. Kitsap has a local rule permitting three pages in strict reply. This ensures that reply materials are narrow in scope and less onerous for the court and parties to digest on the eve of the hearing.

With respect to **FLCR 16(d)(5) – PRETRIAL PROCEDURE - Automatic Temporary Orders Preserving Status Quo**: Our committee is unclear as to what is intended by the term “legal and household records.” We are resistant to the inclusion of this language if the result is a “pattern temporary order” requiring blanket access to legal records without the opportunity to object or clarify when such record, by ordinary definition, could comprise privileged material.

With respect to **FLCR 52 (a)(2)(B) DECISIONS, FINDINGS AND CONCLUSIONS – Requirements**: Our committee is unclear as to the intent of this provision. We question whether this will limit the granting of temporary or emergency ex parte relief if, without further investigation or testimony, there are insufficient facts to allow the court to make formal findings and conclusions. If the purpose of the rule is to simply ensure that the State Patrol gets notified when such circumstances exist, it is not readily evident.

With respect to **FLCR 53.5 - MEDIATION**: Our committee questions whether this rule will invite the argument that litigants should be allowed to skip the settlement conference and proceed directly to trial by claiming financial impediments. We value the benefit of the mandatory settlement conference requirements as our county local rules currently provide.

FLCR 86 - EFFECTIVE DATES: The effective date of these rules should be put off far enough in advance to allow counties to bring their local rules into conformity.

Thank you for the opportunity to comment. Respectfully submitted.